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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN R. NORDBLAD,) Case No. CV 13-07542 DDP (VBKx)
Plaintiff,)
v.) ORDER GRANTING MOTIONS TO DISMISS
DEUTSCHE BANK NATIONAL TRUST) FOR LACK OF SUBJECT MATTER
COMPANY, AS INDENTURE) JURISDICTION AND GRANTING MOTION
TRUSTEE FOR NEW CENTURY HOME) TO EXPUNGE LIS PENDENS
EQUITY LOAN TRUST 2004-2,) [DKT Nos. 10, 22, 25]
BARBARA L. LAING, AND)
DOMINGO CABRERA, JR., AS)
INDIVIDUALS.)
Defendants.)
_____)

Before the court are motions to dismiss under Federal Rules of Civil Procedure(12)(b)(1) and (12)(b)(6) filed by Defendants Barbara L. Laing and Domingo Cabrera, Jr. and Defendant Deutsche Bank National Trust Company ("Deutsche Bank"). (DKT Nos. 10, 22.) Also before the court is Defendants Laing and Cabrera's motion to expunge a lis pendens filed by Plaintiff in the Los Angeles County Recorder's Office. (DKT No. 25.) The motions are unopposed and suitable for adjudication without oral argument. Having considered the submissions before it, the court now adopts the following

1 order.

2 **I. Background**

3 As with four previous suits, *pre se* Plaintiff John Norblad
4 brought this suit against Laing and Cabrera and Deutsche Bank in an
5 effort to set aside a March 4, 2012 non-judicial foreclosure sale
6 in which he lost ownership of real property located at 39943
7 Meadowcrest Way in Palmdale, California. Deutsche Bank acquired the
8 property in the foreclosure sale from Atlantic & Pacific
9 Foreclosure Services, LLC. (Laing and Cabrera's Request for
10 Judicial Notice Exs. 2, 3.) Liang then purchased the property from
11 Deutsche Bank on October 11, 2013. (RFJN Ex. 6.)

12 After Laing moved into the property, she and defendant Cabrera
13 were served with a summons and the First Amended Complaint, as well
14 as a "Three Day Notice to Terminate Tenancy."¹ The suit, seeking
15 quiet title to the subject property, was filed October 11, 2013.
16 FAC at 3-5.) On October 22, 2013, Plaintiff recorded a "Notice of
17 Case Filing of Lis Pendens" in Los Angeles County Recorder's Office
18 as instrument 20131512401. (Defendants Laing and Cabrera's RFJN Ex.
19 18.)

20

21 **II. Motion to Dismiss for Lack of Subject Matter Jurisdiction**

22 "A federal court has subject matter jurisdiction over an
23 action that either arises under federal law, or when there is
24 complete diversity of citizenship between the parties and the
25 amount in controversy exceeds \$75,000." Tosco Corp. v. Cmtys. for a

27 ¹ As Defendants points out, it is unclear why Cabrera was
28 named as a defendant in this suit, as he apparently does not have
title to the property. (RFJN Ex. 6.)

1 Better Env't, 236 F.3d 495, 499 (9th Cir. 2001). A court is
2 required, either by a motion or *sua sponte*, to dismiss an action if
3 it determines that it lacks subject matter jurisdiction.
4 Fed.R.Civ.P. 12(h)(3); Hertz Corp. v. Friend, 130 S.Ct. 1181, 1193
5 (2010). Federal courts must determine they have jurisdiction before
6 proceeding to the merits. Lance v. Coffman, 549 U.S. 437,
7 439(2007); Munoz v. Mabus, 630 F.3d 856 (9th Cir. 2010). "When
8 subject matter jurisdiction is challenged under Federal Rule of
9 Procedure 12(b)(1), the plaintiff has the burden of proving
10 jurisdiction in order to survive the motion." Kingman Reef Atoll
11 Investments, L.L.C. v. United States, 541 F.3d 1189, 1197 (9th Cir.
12 2008) (citation omitted).

13 Here, Plaintiff has not asserted any basis on which this court
14 may exercise jurisdiction. Plaintiff included no discussion of
15 subject matter jurisdiction in his complaint and did not oppose
16 Defendants' motion. Moreover, it is apparent from the complaint and
17 materials submitted by Defendants that this court may not exercise
18 jurisdiction in this case. The case does not present any question
19 of federal law, instead arising from common law fraud and state
20 property laws. Nor is there complete diversity. Defendants Laing
21 and Defendant Deutsche Bank are citizens of California for the
22 purposes of diversity, as is Plaintiff. (Laing and Cabrera's RFJN,
23 Ex. 6 (DKT No. 23); Deutsche Bank's RFJN, Ex. 16 (DKT No. 11); FAC
24 at 1.) This court therefore lacks subject matter jurisdiction over
25 the present suit.

26 Because the court lacks subject matter jurisdiction under Rule
27 12(b)(1), it does not reach Defendants' arguments under Rule
28 12(b)(6).

1 **III. Motion to Expunge Lis Pendens**

2 "A lis pendens is a recorded document giving constructive
3 notice that an action has been filed affecting right or title to
4 possession of the real property described in the notice." Kirkeby
5 v. Superior Court of Orange Cnty., 33 Cal. 4th 642, 647 (2004).
6 Under California law, a lis pendens may be expunged on either of
7 two grounds: (1) the pleading on which the lis pendens is based
8 does not contain a real property claim, or (2) the claimant has not
9 shown a probable validity of the claim by a preponderance of the
10 evidence. Cal. Civ. Proc. Code §§ 405.31, 405.32; Justo v. Indymac
11 Bancorp, 2010 WL 623715, at *11 (C.D. Cal Feb. 19, 2010); Hunting
12 World, Inc. v. Sup. Ct. Of San Francisco, Cal. App. 4th 67, 70-71
13 (1994). In view of the court's dismissal of Plaintiff's case for
14 lack of subject matter jurisdiction, there is no basis to maintain
15 a lis pendens. See McDavid v. Wells Fargo Bank, N.A., WL 4062509,
16 at *2 (C.D. Cal. Sept. 12, 2011).

17

18 **IV. Conclusion**

19 For the forgoing reasons, the Court GRANTS both motions to
20 dismiss for lack of subject matter jurisdiction and GRANTS
21 Defendants Liang and Cabrera's motion to expunge the lis pendens.

22
23 IT IS SO ORDERED.

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25 Dated: December 30, 2013



DEAN D. PREGERSON
United States District Judge

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